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Written statement* submitted by the Asian Legal Resource Centre, non-governmental organizations in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Indonesia: Existing law and policies puts Indonesian workers abroad at risk of abuse*

1. The Asian Legal Resource Centre (ALRC), the Network of Indonesian Migrant Workers (*Jaringan Buruh Migran Indonesia Cabut UUPPTKILN No. 39 tahun 2004,* JBMI) wish to draw the attention of the UN Human Rights Council (HRC) to the failure of existing Indonesian law and policies to provide adequate protection for Indonesian domestic workers abroad. The Hong Kong-based organisations are of the view that, instead of protecting the workers, the current law and policies authorise practices which put the workers at high risk of being abused.

2. In early January 2014, Erwiana Sulistyaningsih, a 23-year-old domestic worker, was sent back to Indonesia in poor health by her Hong Kong employer. Erwiana's face was swollen, the skin on her legs and arms was peeling, and she was unable to walk on her own. During her eight-months in Hong Kong, Erwiana was repeatedly beaten by her employer with various objects, denied her right to adequate food, and allowed to drink only limited amounts of clean water. She was suffering from an allergy but, instead of taking her to the doctor for medical treatment, the employer beat her up each time her allergic reaction occurred. Erwiana was prohibited from taking rest days, leaving the house, and sleeping at night. Her employer only allowed her to sleep for four hours, between 1–5 p.m.

3. After working for over a month in Hong Kong, Erwiana managed to escape from her employer who had failed to pay her salary and subjected her to daily scolding. Being desperate for help and not knowing anybody to call, she called her employment agency in Hong Kong. Instead of helping her, the agency sent a staff member to convince Erwiana that she had to go back and continue working for the employer as she has not finished paying the recruitment agency fee. Erwiana eventually returned to her employer who subjected her to further abuse following her attempt to escape.

4. A similar case took place previously in 2013. Kartika Puspitasari, another Indonesian domestic worker in Hong Kong, was subjected to repetitive assaults by her employers for two years. The physical abuses Kartika experienced include being hit with a bicycle chain on her head and had her face and arms burned with an iron. In an occasion when her employers went on holiday to Thailand for five days, Kartika was tied on a chair and forced to wear a diaper. She eventually managed to escape in October 2012 and her employers were sentenced to 3 – 5 years of imprisonment by a Hong Kong court a year later.

5. The ALRC and JBMI acknowledge the individual criminal responsibility of the employers as well as the obligations of Hong Kong SAR government in both Erwiana and Kartika cases. The organisations believe, however, that the abuses experienced by the workers resulted in part from provisions under the existing Indonesian law and policies which put the workers abroad at a high risk of abuse. As an example – despite their promising title – Law No. 39 Year 2004 on the Placement and Protection of Indonesian Workers Abroad and Minister of Manpower Regulation No. PER-18/MEN/IX/2007, oblige the workers to pay onerous fee to the recruitment agency which put them in severe debt with the agency. Consequently, the workers hardly can refuse the agency's orders – even if it is to stay with an abusive employer, as happened in Erwiana's case.

6. Leaving their recruitment or employment agency is not an option for Indonesian migrant domestic workers. The 2004 law prohibits direct hiring, meaning it is illegal for an Indonesian migrant domestic worker to be employed without any intermediary such as a recruitment and employment agency. For Indonesian migrant workers in Hong Kong, leaving their current employment agency and joining another one is not permitted unless the workers had surpassed a period of two year. This rule was introduced by the Indonesian Consulate in Hong Kong in 2011 through its Circular No. 2524 and Online System.

7. The practice of overcharging does not only place the Indonesian migrant workers in severe debt with the agency but it also results in their underpayment. As an example, according to a decree issued by the Minister of Manpower in 2012, an Indonesian worker in Hong Kong, such as Erwiana, shall be charged with a total fee of IDR 14,780,400 or HKD 13,436 by the employment agency. The fee includes the costs of work training, insurance, medical examination, and travel document application. In practice, however, Indonesian workers employed in Hong Kong are asked to pay a total fee of HKD 21,000, deducted from the workers' salary in their first seven months. Since HKD 3,000 is deducted from their HKD 4,010 monthly salary, Indonesian workers in Hong Kong typically receive slightly above HKD 1,000 in their first seven months of employment.

8. Indonesia became a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) in April 2012. However, little has been done by the government to enhance the protection of Indonesian domestic workers abroad. The ALRC and JBMI note that the Indonesian government and parliament are currently revising the aforementioned 2004 law on migrant workers. The organisations are concerned, however, that there are no substantial changes in the revision draft that can help to minimise the risk of Indonesian workers abroad being abused. As in the existing law, direct hiring remains an illegal act instead of an option the workers can consider. The revision draft also fails to address the heart of the issue of overcharging and debt widely experienced by the Indonesian domestic workers.

9. In her 2004 report, the UN Special Rapporteur on migrant workers, Ms. Gabriela Rodriguez Pizzaro, expresses her concern to the issue of overcharging experienced by migrant domestic workers. In her recommendations she called for the government "to take initiatives so as to avoid the indebtedness of migrant domestic workers, including agreements which provide that their recruitment costs be covered by the employer and/or recruitment agencies and State credit programmes for migrant women". The ALRC and JBMI endorse the Rapporteur's view and call for the Indonesian government to include her recommendations in the draft of revision to Law No. 39 Year 2004.

10. Under Article 66 of the ICMW, the government of Indonesia is obliged to effectively regulate and monitor recruitment agencies and other intermediaries. The draft of revision, therefore, should also be focused on improving the current inadequate government scrutiny over the agencies under the 2004 law on migrant workers. At the moment, the government supervision only takes the forms of licensing approval and renewal as well as the imposition of sanction. In accordance with the Committee on Migrant Workers's General Comment No. 1, the revision of the migrant workers law should enable transparent inspection by relevant government agencies.

11. In view of the above, the ALRC and JBMI request the HRC to urge the Indonesian government to:

a. Comprehensively review and revise the Law No. 39 Year 2004 on the Placement and Protection of Migrant Workers and other related policies, such as the Minister of Manpower Regulation No. PER-18/MEN/IX/2007. The review and revisions should be aimed at the improvement of the well being and protection of the Indonesian domestic workers abroad. The changes made should based on careful considerations Indonesia's obligations under the ICMW which the government ratified in 2012 and other relevant international standards;

b. Consult and take up recommendations from the civil society groups in Indonesia as well as the Indonesian domestic workers abroad on reviewing and revising Law No. 39 Year 2004, and;

c. Closely cooperate with the government and the civil society of employment states in establishing an effective protection mechanism for Indonesian workers abroad.

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*Network of Indonesian Migrant Workers, a coalition of Indonesian migrant workers group based in Hong Kong SAR, China, consisting of Asosiasi Buruh Migran Indonesia (ATKI), Indonesian Migrant Workers Union (IMWU), Gabungan Migran Muslim Indonesia (GAMMI-HK), Liga Pekerja Migran Indonesia (LiPMI), and Persatuan BMI Tolak Overcharging (PILAR), NGO(s) without ECOSOC consultative status, also share the views expressed in this statement.